



Tip Sheet

Confidentiality and Privacy of Personal Health Information

The topic of privacy and confidentiality has always been a part of ONA members' working environment. The issue arises for our members when employers and/or patients, clients and/or residents have issues with what they believe is a breach of personal health information. As a union, these situations are difficult to address. ONA members and leaders need, as best they can, be informed of their obligations and risks associated when handling personal health information.

Nurses have ethical and legal responsibilities to maintain the confidentiality and privacy of client health information obtained while providing care. As these ethical and legal responsibilities can be complex, the College of Nurses of Ontario (CNO) has published a practice standard titled "Confidentiality and Privacy – Personal Health Information"¹ to address these issues.

Specifically, the CNO's practice standard provides an overview of Ontario's current legislation and the nursing standards related to confidentiality and privacy of health information (including electronic and paper). This Tip Sheet has been developed to summarize and identify the important aspects of the CNO's practice standard.

A. *Personal Health Information Protection Act*

The *Personal Health Information Protection Act, 2004 (PHIPA)*² governs health care information privacy in Ontario. This legislation balances a client's right to privacy with the need of individuals and organizations providing health care to access and share health information. This legislation is complementary to the CNO's standards regarding the accountability of nurses as it pertains to clients' personal health information.

- Personal health information is any identifying information about clients that is in verbal, written or electronic form. Clients do not need to be named for information to be considered personal health information. Information is "identifying" if a person can be recognized, or when it can be combined with other information to identify a person.
- *PHIPA* applies to personal health information in the hands of health information custodians³. Custodians are responsible for practices and policies to ensure the confidentiality and security of personal health information.

¹ http://www.cno.org/Global/docs/prac/41069_privacy.pdf

² The legislation may be found at: <http://www.e-laws.gov.on.ca>

³ Custodian is specifically defined in Section 3 of the *PHIPA* but generally is identified as being "a person or organization...who has custody or control of personal health information as a result of or in connection with performing the person's or organization's powers or duties or the work."

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- In general, nurses who are employees of health care organizations are considered “agents” of a custodian and cannot act on his or her own behalf with regard to personal health information. Nurses in independent practice or those employed in health services in non-health care settings are considered custodians and therefore must take specified steps, as outlined in the legislation, to safeguard personal health information.
 - A nurse is responsible for ensuring that she or he uses client information only for the purpose(s) for which it was collected and that the information is as up to date as possible. A nurse is also responsible to ensure that she or he only collects as much information as is needed to meet the purpose of the collection.
 - Elements of Consent: Consent of an individual for the collection, use or disclosure of personal health information by a health information custodian requires that the consent be from the individual; it must be knowledgeable; it must relate to the information collected, used or disclosed; and it must not be obtained through deception or coercion.
 - Implied Consent: *PHIPA* specifies that there are several conditions that must be met to assume a client has given his or her implied consent related to the collection, use and disclosure of personal health information. Specifically, a health information custodian that receives personal health information about an individual from the individual, the individual’s substitute decision-maker or another health information custodian, is entitled to assume that it has the individual’s implied consent to collect, use or disclose the information for the purposes of providing health care or assisting in providing health care to the individual, unless the custodian that receives the information is aware that the individual has expressly withheld or withdrawn the consent.
 - Circle of Care: The term “circle of care” is not a defined term in *PHIPA*; however, it is a term commonly used to describe the ability of certain health information custodians to assume an individual’s implied consent to collect, use or disclose personal health information for the purpose of providing health care, in circumstances defined in *PHIPA*⁴.
 - Express Consent: The *PHIPA* does not require a specific form of express consent - it may be given verbally, in written form or electronically. There may be some situations whereby verbal or written consent is required from the client for the collection, use and disclosure of personal health information. Some examples include where personal health information is going to be disclosed outside of the health care team or if it is for purposes other than providing care.
 - Personal health information belongs to the client. Clients therefore have the right to give, refuse or withdraw their consent for the collection, use and disclosure of their personal health information. Although clients also have the broad right of access to their personal health information, there are possible grounds for refusing access to the client. The grounds for refusing access to the client include:
 - the information is Quality Assurance information or is generated for a regulatory College’s Quality Assurance Program;
 - the information is raw data from standardized psychological tests or assessments;
 - access would present a risk of serious harm to the treatment or recovery of the client or to another person; and

⁴ More information regarding the term “circle of care” may be found on the Information and Privacy Commissioner website at: <http://www.ipc.on.ca/images/Resources/circle-care.pdf>

- access to the information would reveal the identity of a confidential source of information.
- **Disclosure:** Express consent is required when personal health information is disclosed outside of the health care team or is not used to provide health care. However, it is important to note that there are some situations where a custodian is permitted to disclose personal health information outside of the health care team, including but not limited to:
 - if disclosure is needed to provide health care and consent cannot be obtained quickly;
 - to contact a relative or friend of an injured client for consent;
 - to confirm if a client is a resident of a facility and to provide a general status update; and
 - to eliminate or reduce a significant risk of serious bodily harm to another person or the public.

B. Quality of Care Information Protection Act

The *Quality of Care Information Protection Act (QOCIPA)* is another piece of relevant privacy legislation to nursing. *QOCIPA* basically provides broad protection to quality of care information produced by a health care entity or a governing body. The purpose is to promote open discussion regarding adverse events or quality of care information while protecting this information from litigation. Therefore, information obtained from a nurse as part of a CNO or employer Quality Assurance process cannot be used in a legal proceeding.

C. Professional Misconduct

Complying with the above-noted legislation is of great importance. As the CNO's practice standard highlights, it may be professional misconduct where a nurse "gives information about a client to a person other than the client or his or her authorized representative, except with the consent of the client or his or her representative, or as required or allowed by law."

D. Additional Information

For additional information related to the above (including scenarios, standard statements and how to maintain a quality practice setting) please see the CNO's practice standard titled, "Confidentiality and Privacy – Personal Health Information" or the relevant legislation identified above.

Important Notice: If a member or the employer contacts ONA leaders in regard to a complaint or issue surrounding a breach of confidentiality or privacy, contact your Labour Relations Officer for further advice.

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